

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA**

Marcus Trevor Bartole,)	
)	
Plaintiffs,)	ORDER ADOPTING REPORT
)	AND RECOMMENDATION
vs.)	
)	Case No. 3:15-cv-041
Dr. Mark Rodlund, et. al.,)	
)	
Defendants.)	

Before the Court is the Defendants' motion for summary judgment filed on June 26, 2017. See Docket No. 115. The Plaintiff, who is civilly committed at the North Dakota State Hospital and acting pro se, did not respond to the motion. On August 2, 2017, the Court issued an order to show cause, giving the Plaintiff until August 14, 2017, to either respond to the motion for summary judgment or explain why he did not file a timely response. See Docket No. 123. The Plaintiff again failed to respond.

On October 17, 2017, Magistrate Judge Alice R. Senechal issued a Report and Recommendation wherein she recommended the Defendants' motion for summary judgment be granted except for those claims which have been stayed pending the outcome of Ireland v. Olson, No. 3:13-cv-003 (D.N.D. Feb. 2, 2013). See Docket No. 127. The parties were given until October 31, 2017, to file any objections to the Report and Recommendation. No objections were filed.

The Court has carefully reviewed the Report and Recommendation, the relevant case law, and the entire record, and finds the Report and Recommendation to be persuasive. The Court agrees with Judge Senechal that the Defendants' motion for summary judgment should be granted save for those claims which have been stayed. Accordingly, the Court **ADOPTS** the Report and

Recommendation (Docket No. 127) in its entirety and **GRANTS** the Defendants' motion for summary judgment (Docket No. 115) as to the following:

- (1) conditions of confinement claim regarding constant illumination against Kelly Bauer, Randy Switters, and Karen Stroh in their personal capacities;
- (2) unreasonable seizure of personal property claim against Isaiah Kronebusch in his personal capacity;
- (3) conditions of confinement claim regarding inadequate sanitation against Dr. Mark Rodlund, Travis Bullock, Wanda Bear, Alex Schweitzer, Kerry Wicks, Melanie Flynn, Kelly Bauer, Larry Culp, Dr. Rosalie Etherington, Dr. Robert Lisota, Dr. Lynne Sullivan, Dr. Jennifer Krance, Shannon Bratton, Michelle Richardson, Lynnette Himmerick, Candyce Dahnke, Stroh, Karen Marzolf, Nathan Schulte, Switters, Lorrie Carlson (referred to as Lorrie Riemann in prior orders), Eugene Ringuette, Brent Pladson, Diana Welk, Terry Weippert, and Chad Shultz in their personal capacities;
- (4) failure to protect claim against Switters in his personal capacity;
- (5) conditions of confinement claim regarding the handling of his food against Pladson, Weippert, Dahnke, Bratton, Stroh, and Patel in their personal capacities;
- (6) deliberate indifference to serious medical needs claim regarding chest pains against Carlson in her personal capacity;
- (7) deliberate indifference to serious medical needs claim regarding Bartole's toe against Henderson and Patel in their personal capacities;
- (8) privacy violations claims against Flynn, Bauer, and Clifford Erickson in their personal capacities;
- (9) declaratory and injunctive relief claims against the State of North Dakota, North Dakota Department of Human Services, North Dakota Department of Corrections and Rehabilitation, and NDSH relating to failure to protect and conditions of confinement claims—including that a certain resident be kept at least 2,000 feet away from Bartole; that the court declare defendants acted unlawfully in violation of the Constitution; that the court order NDSH to provide Bartole with food not prepared at the James River Correctional Center and not handled by NDSH staff and to always provide legitimate utensils; and that the court declare defendants did not take reasonable measures to ensure Bartole's safety and that defendants' mentality is akin to criminal recklessness.

IT IS SO ORDERED.

Dated this 3rd day of November, 2017.

/s/ Daniel L. Hovland
Daniel L. Hovland, Chief Judge
United States District Court